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**October 6, 2005**

**TO: MEMBERS OF THE MOTOR VEHICLE  
DEALERS STUDY COMMITTEE**

**FROM: ANN VER HEUL, LEGAL COUNSEL  
LEGISLATIVE SERVICES AGENCY**

**RE: BACKGROUND INFORMATION**

**I. CHARGE.**

Study Iowa law pertaining to the relocation of a licensed motor vehicle dealership.

**II. CURRENT IOWA LAW.**

**A. Code Chapter 322 – Motor Vehicle Manufacturers,  
Distributors and Dealers.**

1. Includes regulation and licensing of motor vehicle dealers, that is, persons who are in the business of selling new and used motor vehicles at retail:

- **New Vehicles** – Person who sells new motor vehicles of any make at retail must be authorized to do so by a written contract with a manufacturer or distributor of that make of new motor vehicle and obtain a license to sell new motor vehicles from the state Department of Transportation (DOT). (322.3(1))
- **Used Vehicles** – Person who sells used motor vehicles at retail must be a licensed dealer of new motor vehicles or obtain a license to sell used motor vehicles from the state DOT. (322.3(2))

2. Includes regulation of certain practices of manufacturers or distributors such as:

- A manufacturer or distributor cannot require a motor vehicle dealer to sell, assign, or transfer any retail sales contracts arising from the sale of motor vehicles only to persons designated by the manufacturer or distributor. (322.3(4))
- A motor vehicle dealer's contract with a manufacturer or distributor cannot be terminated without just, reasonable, and lawful cause or because the dealer failed to sell, assign, or transfer any retail installment contracts arising from the sale of motor vehicles only to persons designated by the manufacturer or distributor. (322.3(5))
  - a. Determination of whether a contract has been terminated without just and reasonable cause is made by the state DOT. (322.6, unnumbered paragraph 3)
  - b. A new license may be denied to a motor vehicle dealer who contracts with a manufacturer within 90 days of the license application that wrongfully terminated a contract with another motor vehicle dealer in the same county in which the applicant for a new license proposes to do business. (322.6(7))
- A manufacturer or distributor cannot force a motor vehicle dealer to accept delivery of motor vehicles or other items that the dealer did not order. (322.3(8))
- A manufacturer or distributor cannot require a motor vehicle dealer to submit to arbitration. (322.3(10))
- A manufacturer or distributor cannot reduce the amount of compensation for or disallow a claim for warranty work or parts, sales, service, or leasing provided by a motor vehicle dealer if 12 or more months have passed since the claim was submitted to the manufacturer or distributor. (322.3(13))
- A manufacturer or importer generally cannot own, operate, or control a motor vehicle dealer except as specifically provided by law. (322.3(14))

**B. Code Chapter 322A – Motor Vehicle Franchisers.**

1. Regulates contracts (**franchises**) between manufacturers or distributors of motor vehicles (**franchisers**) and motor vehicle dealers (**franchisees**) who receive motor vehicles from franchisers to sell to the general public within the franchisee's area of responsibility (**community**) stipulated in the franchise agreement. (322A.1)
2. Includes regulation of certain practices of franchisers such as:
  - **Termination or discontinuation of existing franchise** — Franchiser cannot terminate or discontinue an existing motor vehicle franchise without a showing at hearing before the Department of Inspections and Appeals that:

- a. The franchiser has good cause for such termination or discontinuance; **AND**
  - b. Another franchise in the same line-make will become effective in the same community without diminution of service; **OR**
  - c. The community cannot be reasonably expected to support such a dealership; **OR**
  - d. The franchiser discontinued the line-make of the motor vehicle which is the subject of the franchise; **OR**
  - e. The franchisee's license as a motor vehicle dealer is revoked by the state DOT. (322A.2)
- **Establishment of new franchise** – Franchiser that is permitted to terminate or discontinue a franchise cannot establish a new franchise for a motor vehicle dealership for the same line-make in the same community where the old franchise was in effect unless the franchiser establishes at a hearing that there has been a change in circumstances so that the community can be reasonably expected to support the dealership. (322A.3)
  - **Establishment of additional franchise** – Franchiser cannot establish an additional franchise for a motor vehicle dealership in any community in which the same line-make is already represented unless the franchiser establishes at a hearing that there is good cause to establish an additional motor vehicle dealership in the community and that it is in the public interest. (322A.4)
  - **Factors not allowed to show good cause** – Consideration of the following factors is not allowed to support termination or discontinuation of a franchise or establishment of an additional franchise:
    - a. Sole fact that franchiser desires further market penetration.
    - b. Change of ownership or executive management of the franchisee's dealership unless proven that the change will be substantially detrimental to the sale of motor vehicles in the community and good cause otherwise exists for the termination, discontinuation, or additional dealership.
    - c. Fact that franchisee refused to purchase or accept delivery of items or services not ordered by the franchisee.
    - d. Fact that the dealership moved to another facility and location within the dealership's community equal or superior to the dealership's former location and facility **OR** that the dealership added an additional line-make and the dealership's facility is adequate to accommodate the addition.

- e. Fact that the dealership fails to meet an index or standard established by the franchiser unless it is shown that such failure is substantially detrimental to the sale of motor vehicles in the community and good cause otherwise exists for the termination, discontinuation, or additional dealership. (322A.11)
- **Factors establishing good cause for termination or discontinuation of a franchise include:**
  - a. Amount of business transacted by the franchisee.
  - b. Investment necessarily made and obligations incurred by the franchisee in performing the franchise.
  - c. Permanency of the investment.
  - d. Injury to the public welfare if the franchisee's business is disrupted.
  - e. Adequacy of the franchisee's facilities to service the motor vehicles sold by the franchise.
  - f. Performance of warranty work by the franchisee.
  - g. Compliance with valid franchise requirements found to be reasonable and material.
  - h. Bad faith in complying with valid franchise requirements found to be reasonable and material. (322A.15)
- **Factors establishing good cause for establishment of an additional franchise in the same community include:**
  - a. Amount of business transacted by other franchisees of the same line-make in that community.
  - b. Investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in performing their franchises.
  - c. Permanency of the investment.
  - d. Effect on the retail motor vehicle business as a whole in that community.
  - e. Injury to the public welfare if an additional franchise is established.
  - f. Adequacy of service for vehicles of the line-make in the community being provided by existing franchisees of that line-make. (322A.16)

### **III. 2005 PROPOSED LEGISLATION – SENATE STUDY BILL 1237/HOUSE FILE 575.**

#### **A. Amends Code Chapter 322 regulating and licensing motor vehicle dealers.**

**B. Section 1 – Definitions – proposes to add definitions for "community" and "franchise" from Chapter 322A to Chapter 322.**

**C. Section 2 – Location of New Motor Vehicle Dealerships – proposes additional requirements for obtaining a motor vehicle dealer's license to sell new vehicles:**

1. Must provide a statement of the geographic boundaries of the applicant's community (the area of responsibility stipulated in the franchise).
2. Proposed location of new motor vehicle dealership cannot be less than five miles from the geographic boundary of the applicant's community unless:
  - All existing new motor vehicle dealers that sell the same make and whose principal places of business are within 10 miles of the proposed location give written consent; OR
  - An administrative law judge from the department of inspections and appeals determines at a hearing, of which all existing new motor vehicle dealers of the same make within 15 miles of the proposed location have been notified, that there is good cause for the location of the new dealership and that one of the primary purposes of the location is a purpose other than to serve an area outside the applicant's community; OR
  - If the applicant's community is on the state's boundary with another state, the location restrictions do not apply to that portion of the applicant's community boundary that is contiguous to the state's boundary.

**D. Section 3 – Relocation of Existing Motor Vehicle Dealerships – proposes regulation of relocation of existing motor vehicle dealerships that sell new motor vehicles:**

1. No relocation of the principal place of business of an existing new motor vehicle dealer to a location 10 or fewer miles from the principal place of business of another existing new motor vehicle dealer who sells the same make or makes **UNLESS**:
  - The proposed relocation is within the dealer's community, is within two miles of the dealer's existing location, and the dealer has not relocated its principal place of business within the past five years; **OR**
  - All existing new motor vehicle dealers within 10 miles of the proposed relocation that sell the same make or makes give written consent to the relocation; **OR**
  - An administrative law judge from the department of inspections and appeals determines at a hearing, of which all existing new motor vehicle dealers within 15 miles of the proposed relocation have been notified, that there is good cause for the relocation and that

one of the primary purposes of the relocation is a purpose other than to serve an area outside the dealer's community; **OR**

- If the dealer's community is on the state's boundary with another state, the relocation restrictions do not apply to that portion of the dealer's community boundary that is contiguous to the state's boundary.

2. No relocation of the principal place of business of an existing new motor vehicle dealer to a location which is more than 10 miles from its existing location **UNLESS**:

- The principal place of business being moved by the dealer is being moved to a location within the dealer's community and is separately licensed to the same dealer as another principal place of business; **OR**
- The area of the dealer's community has changed by more than 20 percent; **OR**
- The dealer's franchise has been amended with the express consent of the dealer to specify the proposed relocation of the dealer's principal place of business within the dealer's community; **OR**
- An administrative law judge from the department of inspections and appeals determines at a hearing, of which all existing new motor vehicle dealers within 15 miles of the proposed relocation have been notified, that the proposed relocation will not substantially diminish the service provided in the community by the dealer for the make or makes sold and that one of the primary purposes of the relocation is a purpose other than to serve an area outside the dealer's community.

3. No relocation of the principal place of business of an existing new motor vehicle dealer to a location which is **BOTH** more than 10 miles from that dealer's existing location and is 10 or fewer miles from the principal place of business of another existing new motor vehicle dealer that sells the same make or makes **UNLESS** the requirements for both these circumstances are satisfied.

**E. Section 4 - Applicability - Act does not apply to the establishment of a place of business of a motor vehicle dealer at a new location or to the relocation of a principal place of business of an existing motor vehicle dealer to a new location if ALL of the following apply:**

1. The dealer acquired or leased the real estate for the new location within the dealer's existing community on or before August 14, 2004.
2. Construction of the place of business at the new location commenced on or before October 1, 2005.
3. The state DOT issues a new license to the motor vehicle dealer for the new location on or before October 1, 2005.

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